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**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-197980 DATE: May 9, 1980

MATTER OF: *[Claim for]* Louis Osbourne - Overtime compensation in lieu of compensatory time off

DIGEST: (1) Former Air Force employee requests reconsideration of Claims Division disallowance of claim for overtime compensation in lieu of compensatory time off for period December 1971 through August 1977. Claimant bases request for reconsideration on dispute of fact with agency. Where written statements submitted by a Government agency and individual claimant present irreconcilable dispute of fact, this Office has no alternative but to accept agency's statement of facts. Since claim is doubtful due to lack of suitable evidence we must deny claim and leave claimant to remedy in courts. See Lawrence J. McCarren, B-181632, February 12, 1980.

(2) In claim for overtime compensation in lieu of compensatory time off, claimant contends he was never advised of his rights pursuant to Federal Personnel Manual, chapter 550, S1-3d. and that he was administratively pressured to accept, as opposed to requesting, compensatory time off. However, in accordance with Air Force regulations, employee's initialing of time cards provides contrary evidence of employee's understanding that he was requesting compensatory time off in lieu of overtime pay. Resulting factual dispute on which appeal is based is of insufficient probative value to permit payment of the claim.

Mr. Louis Osbourne requests reconsideration of his claim for overtime compensation in lieu of compensatory time for the period December 1971 through August 1977, as an employee of the Department of the Air Force. The claim was disallowed by our Claims Division on January 11, 1980.

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The basis for Mr. Osbourne's request for reconsideration is his dissatisfaction with that part of the adjudication of our Claims Division which concluded that "in the absence of substantive documentation to the contrary, we have to assume you requested and approved of receiving compensatory time in lieu of overtime compensation." In this regard Mr. Osbourne asks this Office to reconsider portions of a Department of the Air Force letter contained in the record which he feels support his renewed contention that he was not advised of his rights with respect to choosing between overtime pay and compensatory time off. Alleging that he did not knowingly request or approve of such specified dates of compensatory time in lieu of overtime compensation, Mr. Osbourne reasserts his claim for overtime pay.

The record shows that Mr. Osbourne served as public information officer to an Air Force Reserve unit during unit training assemblies (UTA) one weekend of each month and 2 weeks of summer camp from December 1971 through August 1977. For the overtime which he worked Mr. Osbourne received compensatory time off. Although he initialed his time card for each day for all compensatory time worked and used, Mr. Osbourne states that he was never advised of his rights with respect to choosing between overtime pay and compensatory time off.

As stated in the Claims Division's Settlement Certificate, under the authority of 5 U.S.C. § 5543(a) (1970) and the implementing regulations contained in 5 C.F.R. § 550.114, agencies may grant compensatory time off instead of paying overtime compensation for irregular or occasional overtime work. Employees whose rate of basic pay is equal to or less than grade GS-10, step 10, may request compensatory time off in lieu of overtime compensation, while employees whose rate of basic pay exceeds grade GS-10, step 10, may be required at the discretion of their agency to take compensatory time off in lieu of overtime compensation. See also Federal Personnel Manual (FPM), chapter 550, S1-3d.

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The administrative report forwarded by the Air Force and dated February 23, 1979, states that Mr. Osbourne's claim was denied because he requested and used compensatory time, and the fact that he initialed his time card for the compensatory time evidences Mr. Osbourne's understanding that the compensatory time was in lieu of overtime pay. This report which Mr. Osbourne asks us to reconsider cites Air Force Manual 177-372, Volume II, Attachment 14, which stipulates that employees working compensatory time must initial the time card each day for all compensatory time worked and used. The report states further that the reason for this initialing is to insure the employee's understanding that it is compensatory time which is being requested by the employee and that compensatory time off in lieu of overtime pay equal to the amount of time worked will be granted.

The Air Force report thus concludes that, although Mr. Osbourne could not have been required to take compensatory time prior to November 1975, because his rate of pay was below the maximum rate for grade GS-10, compensatory time was granted at his request. After November 1975, Mr. Osbourne's rate of pay was above the maximum rate for GS-10 and he could have properly been required to take compensatory time off in lieu of overtime compensation.

As noted above, Mr. Osbourne refutes this contention stating that he was never advised of his right to receive overtime compensation rather than compensatory time off prior to November 1975, and that as a result of administrative pressures he was forced to accept compensatory time off rather than knowingly requesting compensatory time off in lieu of overtime pay as provided under the FPM, chapter 550, S1-3d.

Our procedures for review and reconsideration of claims settlements are set forth in Part 32 of title 4, Code of Federal Regulations which provides that applications for reconsideration should state the errors which the applicant believes have been made in the

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settlement and which form the basis of his request for reconsideration. In the present case, Mr. Osbourne's appeal is clearly predicated on a factual dispute with the Air Force in regard to whether prior to November 1975, he requested compensatory time off in lieu of overtime compensation. This factual dispute cannot be resolved through resort to the administrative record. In deciding claims this Office does not conduct adversary hearings but rather operates on the basis of the written record presented to us by the parties. Where the record before this Office contains a dispute of fact which cannot be resolved without an adversary proceeding, it is our long-standing practice to resolve such disputes in favor of the Government William C. Hughes, Jr., B-192831, April 17, 1979.

As a result, the factual dispute on which Mr. Osbourne's appeal is based is of insufficient probative value to permit payment of the claim. Since the claim is of doubtful validity due to a lack of suitable evidence, we must deny the claim and leave the claimant to his remedy in the courts. Lawrence J. McCarren, B-181632, February 12, 1975.

Therefore, we sustain the Claims Division's disallowance of Mr. Osbourne's claim for overtime compensation.



For the Comptroller General  
of the United States